

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

LINDA AVILA,

Plaintiff,

v.

CIVIL ACTION NO. 1:18-CV-00147

UNITED STATES OF AMERICA,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of findings and recommendations regarding disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge Tinsley submitted to the court his Findings and Recommendation ("PF&R") on June 4, 2019, in which he recommended that the district court deny plaintiff's Motion for Judgment on the Pleading (ECF No. 15) and dismiss plaintiff's Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 (ECF No. 2) for lack of jurisdiction.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Tinsley's Findings and Recommendation. The failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

The parties failed to file any objections to the Magistrate Judge's Findings and Recommendation within the seventeen-day period. Having reviewed the Findings and Recommendation filed by Magistrate Judge Tinsley, the court adopts the findings and recommendations contained therein. Accordingly, the court **FINDS** that the plaintiff has failed to demonstrate that she is entitled to any relief in this court under section 2241. Therefore, the court hereby **DENIES** plaintiff's Motion for Judgment on the Pleading (ECF No. 15), **DISMISSES** plaintiff's Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 (ECF No. 2) and this civil action for lack of jurisdiction and removes this matter from the court's docket.


Additionally, the court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that the governing

standard is not satisfied in this instance. Accordingly, the court **DENIES** a certificate of appealability.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to plaintiff and counsel of record.

IT IS SO ORDERED this 14th day of August, 2019.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge